STATE OF MICHIGAN

IN THE SUPREME COURT

GERARD J. WIATER,

Plaintiff/Appellee

v.

GREAT LAKES RECOVERY CENTERS, INC.,

Defendant/Appellant

Supreme Court No. 128139
Court of Appeals No. 250384
Lower Court No. 03-40316-NO

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DEFENDANT/APPELLANT'S SUPPLEMENTAL BRIEF AND ARGUMENT AUTHORIZED BY COURT ORDER

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ARGUMENT AND AUTHORITY

Defendant maintains that Plaintiff, Gerald Wiater, was a "licensee" on Defendant's premises as opposed to an "invitee." Nonetheless, based upon the Court's Order, all argument hereafter concerning fact or law assumes Plaintiff was an invitee.

A. "Open and Obvious"

The first issue to which the Court directs attention is whether or not the icy condition of Defendant's parking area used by Plaintiff was "open and obvious." This, however, does not appear to be seriously disputed by Plaintiff. Mr. Wiater had little recall of precisely the conditions. He did testify:

> "Q: Okay. When you pulled in that morning, March 6, 2001, what, if anything, did you note about the parking lot and anything on the surface of that parking lot?
> A: Nothing that I can remember, nothing that -- nothing --
> Q: Was there any snow or ice in the parking lot?
> A: Well, there was snow and icy all over that time of the year, but I don't recall -- didn't particularly note something or try to remember it. I don't know." [Wiater dep., p. 51]. [Underlining added]. [See also Wiater Dep., pp. 24-25].

He does remember that he was walking carefully, that is, taking short steps which would imply slippery conditions. [Waiter dep., p. 59]. Whatever the condition was, it should be presumed Mr. Wiater was aware of it since he had already transversed the same route minutes before.

Mr. Wiater's companion and witness, Lynn LaVictor, was more descriptive. He says that any grown man (as well as a child) would know it was icy. [LaVictor dep., p. 33]. He was aware of it. [LaVictor dep., pp. 33-34]. He testified that it was "a little bit icy, enough for my -- boots -- shoes that I had on." [LaVictor dep., p. 34]. LaVictor added that the condition immediately around where Mr. Wiater slipped and fell was "icy." Asked whether he noted anything unusual he answered: "just clear ice; clear ice." [LaVictor dep., p. 35]. When asked

whether or not he could see the ice, his answer was, "Oh, yeah. You could see the ice." [LaVictor dep., p. 36].

The trial court found the ice was open and obvious. [Hearing transcript, pp. 46, 52]. The Court of Appeals also concluded:

> "Contrary to plaintiff's argument, there is no evidence to reasonably support a finding that the alleged icy condition of the parking lot at the time of the incident was not open and obvious. Plaintiff apparently bases his claim that there was evidence the condition was not open and obvious in substantial part on LaVictor's description of the ice in the parking lot as 'clear ice.' But LaVictor expressly testified that, 'You could see the ice.'...Accordingly, we conclude that there is no reasonable support in the evidence for a claim that the ice was not open and obvious, i.e., that an average user of ordinary intelligence would have been unable to discover it on casual observation." [Page 2].

There does not appear to be any question but what the ice was either known and recognized or available to be seen by the average or casual observer. It does not, of course, make any difference in terms of the liability whether or not Mr. Wiater actually observed the condition if it was there to be seen and appreciated by the average user. *Novotney v Burger King Corp*, 198 Mich 470; 499 NW2d 379 (1993); *Joyce v Rubin*, 249 Mich App 231, 238; 642 NW2d 360 (2002). The ice, therefore, on Defendant's parking lot was "open and obvious."

B. "Special Aspect" - Burden of Proof

The present case was an appeal of right by the Plaintiff following the trial court's grant of Summary Disposition in favor of Defendant. The trial court, under MCR 2.116(C)(10), determined that reasonable minds could not differ that the ice which Plaintiff claims to be the cause of injury, was other than "open and obvious." No special aspects were presented by the Plaintiff showing that the condition was unreasonably dangerous despite its open and obvious nature. *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 516; 629 NW2d 384 (2001).

The Michigan Court of Appeals determined that Plaintiff was an invitee rather than a licensee and therefore due the favored standard of care. The Plaintiff asserts by Brief in Response to Defendant's Application for Leave that this case "...is unique in that there were 'special aspects'." The Court of Appeals, however, did not find that there were "special aspects." Rather, the Court found:

> "There was evidence to create a genuine issue of material fact as to whether or not a special aspect made the situation unreasonably dangerous because it was effectively unavoidable to invitees who used the parking lot."

The possessor of premises has a general duty to use reasonable care to protect invitees from unreasonable risk of harm that might be caused by a dangerous condition. *Lugo, supra; Bertrand v Alan Ford, Inc*, 449 Mich 606, 609; 537 NW2d 185 (1985). This duty, however, does not extend to dangers that are open and obvious unless there is a "special aspect" of the condition that make even an open and obvious risk unreasonably dangerous. *Lugo, supra.* The question of whether or not a danger is open and obvious depends on whether it is reasonable to expect an average person with ordinary intelligence to have discovered it upon casual inspection. *Novotney, supra.* In sum, possessors of land are not insurers of safety. *Riddle v McCouth Steel Corp*, 440 Mich 85; 485 NW2d 676 (1992). Landowners do not have a duty to warn or remove open and obvious dangers if the invitee knows or can reasonably be expected to discover the dangerous condition himself. *Corey v Davenport College of Business*, 251 Mich App 1, 8-9; 649 NW2d 392 (2002).

Only those "special aspects" that "give rise to a uniquely high likelihood of harm or severity of harm if the risk is not avoided will serve to remove that condition from the "Open and Obvious" doctrine and support liability. *Lugo, supra* at 519. A common or ordinary condition, or one that can be avoided, is not uniquely dangerous. *Corey, supra.*

A Motion for Summary Disposition under MCR 2.116(C)(10) tests the factual underpinnings of a claim. When faced with such a motion, the Plaintiff can no longer rely on mere allegations must come forward with evidence in the form of affidavits, admissions, depositions or other proofs in support of his claim. *Smith v Globe Life Ins Co*, 460 Mich 446; 597 NW2d 28 (1999); *Spiek v Dept of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

In order to overcome a motion, Plaintiff must identify a genuine and material issue of disputed fact. Otherwise, the moving party is entitled to judgment as a matter of law. *Spiek, supra*; see also MCR 2.116(G)(3)(b). Plaintiff has, therefore, the burden of establishing a *prima facie* case resting on fact in opposition to a motion under MCR 2.116(C)(1). This includes proofs on four elements:

(1) A duty owed by the defendant to the plaintiff;
(2) Breach of that duty;
(3) Causation;
(4) Damages. [*Case v Consumer Power Co*, 463 Mich 1; 615 NW2d 17 (2000)].

It is, hence, Plaintiff's burden in a negligence action to establish the "duty" element, both as a matter of fact and law. The open and obvious doctrine attacks the duty element and cuts off liability. *Bertrand, supra*; *Lugo, supra.* That duty, however, does not, in premises liability cases, "encompass removal of open and obvious dangers..." Thus, as stated in *Lugo*:

> "...the open and obvious doctrine should not be viewed as some type of 'exception' to the duty generally owed invitees, but rather an integral part of the definition of that duty." [Citing *Bertrand, supra.*]

Plaintiff has the burden of proof with respect to duty imposed upon the Defendant. If the danger is open and obvious, there is no duty owed by the possessor of land unless the Plaintiff can show, as part of his burden, that there is a genuine issue of material fact concerning "special aspect." The nature of the burden imposed upon a plaintiff as stated by the Court in *Lugo*, comprises:

> "...a high standard for determining what constitutes a 'special aspect.' Without the existence of a special aspect, an action premised upon an open and obvious condition will be barred by the open and obvious doctrine."
>
> * * *
>
> "In sum, only those *special aspects* that give rise to a uniquely high likelihood of harm or severity of harm if the risk is not avoided will serve to remove the condition from the open and obvious danger." [Italics added].

Furthermore, the premises possessor or owner has a duty to warn of, or diminish unsafe conditions, only where the same is known and of such a character that the possessor should have been aware of existence a sufficient length of time to give rise to the obligation. *Prebenda v Tartaglia*, 245 Mich App 168; 627 NW2d 610 (2001); *Clark v Kmart*, 465 Mich 416; 634 NW2d 347 (2001). See also *Lugo, supra.* In other words, the burden and proof resting with Plaintiff must include evidence that the Defendant either should have anticipated the condition and danger, or knew about it and it remained unremediated for a sufficiently long period of time to fairly impose liability.

It seems eminently clear, and the Court in *Lugo* confirms, that Plaintiff has the burden of proof to show the duty element in any claim of liability. This includes "special aspect" meeting the "high standard" set when the danger is open and obvious. Without special aspect, the open and obvious condition is, by definition, not "*unreasonably dangerous.*" See *Lugo, supra.*

C. "Special Aspect"

The final question is whether or not there is a genuine and material issue of fact with respect to "special aspect." Plaintiff, as argued above, has that burden. For the purpose of the following argument, obviously it must be assumed that the condition was in fact and in law, "open and obvious." Starting with that proposition, we must accept as fact the parking lot was icy. Was that alone a "special aspect" creating an unreasonable risk of injury?

A short review of additional facts is necessary. Plaintiff's witness, Mr. LaVictor, contends that he normally salted not only the sidewalks but the parking area. He claims to have run out of salt a week before Mr. Wiater's slip and fall and used table salt thereafter.

Coincidentally, he says he depleted the substitute on March 5, 2005 - the day before Mr. Wiater's fall. He also claims that staff members of Defendant were notified but did nothing and as a consequence the parking area was icy on March 6. We will set aside the question of whether or not salting the parking lot enhances rather than moderates the risk of a slip and fall. Mr. LaVictor's testified that at that time of the year the snow was melting causing runoff that was freezing again in the evening. Salt was contributing to that course of events. It may be that using salt did nothing more than aggravate whatever was the risk that attached to the condition. A mix of water and ice is at least as hazardous as one without the other.[1]

Plaintiff concedes that "this case is very similar to many other slip and falls that occur in winter conditions in Michigan." The Defendant agrees. This is why it is not unusual or unexpected. Plaintiff himself testified that snow covered or ice parking lots were typical. [Wiater dep., pp. 24-25, 51]. Even unsalted walkways or parking lots, in common experience and expectation are encountered by pedestrians. As a matter of fact, that is the essence of the open and obvious doctrine. What was observed, or should have observed here, was an icy and unsalted area. It is Defendant's position, however, that the what and wherefores of the salting or lacking of salting, raised by Plaintiff constitutes an irrelevant deviation of the primary issues. Even a factual dispute here is not material to a resolution of whether or not summary disposition should be granted. Nonetheless, Plaintiff goes on to assert that Defendant:

> "...had been warned several times over a period of one week that they had an extremely [sic] black ice condition in their parking area and that they were out of salt to be used on that parking lot...This is not a slippery condition that had been created after a storm or cold weather. The condition existed for a minimum of one week before the accident. The Defendant chose to ignore the danger and exposed their business invitees to black ice conditions."

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[1] Mr. LaVictor's testimony is either confused or suspect as to when he would have salted the parking area, and therefore when it would have been salted on March 6th, that is, morning or evening. That would, of course, make a difference as to the situation when Mr. Wiater arrived; ice as described, or melting ice the result of the application of salt. Mr. LaVictor says he was out the night before, March 5, applying salt because "they [GLR] wanted it out there--" [LaVictor Dep., pp. 13, 20-21]. On the other hand, he says that he was out the morning of March 6th snow shoveling but putting down no salt because he didn't have any. He adds that salting is always done in the early morning immediately after wake-up and before the staff arrives. [LaVictor dep., p. 19]. Well, which is it, the parking area was salted in the morning or evening or both?

These claims and assertions of fact are nowhere supported by testimony or documentation. There was no "black ice." Black ice is understood to be that which is not seen or readily recognized because it assumes the same hue as the underlying surface. The opposite is the case here. Mr. LaVictor, Plaintiff's own witness, said that the ice was readily observable, clear and that any grown man, as well as a child would recognize it.

Plaintiff's further contention that there was no change in the condition for a week and that no action had been taken during that week is also untrue. First, with respect to no change in condition, the fact is the day before this event substantial snow fell requiring Defendant's snow removal contractor to plow the parking area, apparently in the early morning hours of March 6th. Exhibit E, the Affidavit of Mary Jane Burcar, adds:

> "That on March 5, 2001, the day before the accident involving Mr. Wiater, Enright Construction Company performed plowing services in the parking area and driveway because over a foot of snow fell. That Enright's plowing services were completed prior to the accident involving Mr. Wiater which occurred prior to 8:00 a.m. on the morning of March 6, 2001."

Ms. Burcar's testimony is supported by documents made part of Exhibit B showing that the parking area had been plowed both on March 5th and March 6th. Mr. LaVictor confirms this. He testified that the contractor was properly carrying out the plowing as necessary. This would be done around 6:00 a.m. to 7:00 a.m. in the morning. [LaVictor dep., p. 13]. He or others had been out the day before (March 5) to snow shovel and salt the driveway. [LaVictor dep., pp. 13, 19-20]. Contrary to Plaintiff's argument, his witness, as well as Susan Burcar, along with the plowing bill, confirms that the condition of the parking area changed because of snow plowing both on March 5th and 6th. The snow plowing would have been completed in the early morning hours of March 6th, only an hour or two before Mr. Wiater's fall. The state of the parking area, therefore, was not static, as asserted, for the week prior to the March 6th accident.

What was the notice or knowledge possessed by the Defendant for a long enough period of time to induce "measures to diminish the alleged risk." At best the prevalent condition could have existed only for a couple of hours. Ms. Burcar, whom Mr. LaVictor says is responsible, didn't arrive for work until about 8:00 a.m., and could not have known about the condition of the parking lot prior to that. Mr. Wiater had already fallen taken his fall.

The Plaintiff (through Mr. LaVictor) contends that Defendant ran out of salt approximately a week before the incident. Table salt was, he says, then used. The staff at GLR, it is claimed, refused to purchase any. All if this is belied by the fact that Ms. Burcar has just purchased 50 pounds of salt. See Exhibit E. This is verified by a receipt dated February 24, 2001, for 50 pounds of rock salt approximately ten days prior to Mr. Wiater's fall. Mr. LaVictor's testimony would mean the rock salt was gone by February 28, a mere three or four days after a 50 pound purchase. [LaVictor dep., pp. 52-53].

Plaintiff concedes that at the time of the year there is snow and ice all over, including parking lots. [Wiater dep., pp. 25, 51]. He adds that on the morning he fell there was no snow on the parking lot that had not yet been plowed. [Wiater dep., p. 52]. Both Mr. Wiater and Mr. LaVictor failed, after repeated prompts, to identify anything unusual or odd (outside the icy conditions) about the parking lot that might add or contribute to any concern and serve as a "special aspect." In addition, Mr. Wiater testified to using the same parking area several times a week through four winter months prior to this incident.

Does any of this add up to a special aspect? To answer that question, a review of recent appellate decisions is necessary. The Michigan Supreme Court in *Lugo*, though not an ice case, provides the rule and standard. If the risk of harm remains unreasonable, though it is obvious, and despite the knowledge of the invitee, then the possessor has an obligation to undertake

precautions to reduce the risk. This assumes Defendant was aware or should have been aware of "special aspect." The Court provided two examples. One is where the floor in a commercial building is covered with standing water and there is no other exit. The plaintiff, in effect, is forced to cross the danger because it is "effectively unavoidable." *Lugo* was a trip and fall after stepping into a pot hole in a parking lot. The second example given by the Court was an unguarded 30 foot deep pit in a parking lot. Though observable, it would present a "uniquely high likelihood of harm or severity of harm if the risk is not avoided." Typical pot holes that all of us normally encounter, though capable of causing injury or severe injury, is not a condition creating an unreasonable risk of injury. These should be discovered and expected by a pedestrian.

The Court in *Lugo* made it clear that "special aspect" and hence liability is not met merely as a consequence of the harm actually caused. The measure applied to the condition is its potential. See footnote #2. Therefore, just because the plaintiff suffered severe harm as a result of an alleged condition does not, by definition, mean that the condition presented prior to a slip and fall offered a "uniquely high risk of severe harm." There must be an existing and objectively high risk of severe physical injury. See *Lugo, supra.*

On the other hand, the Court instructs that the condition cannot be, in and of itself, typical, common, or ordinary, that is, what human beings would be expected to encounter on a routine basis. It is the difference between pot holes and unguarded pits. Otherwise, there is nothing special about "special aspect." Or as *Bertrand, supra* describes it, "unique."

One of the difficulties in the present case is Plaintiff's lapse, despite his burden, to articulate what precisely is the special aspect in tandem with the necessary proofs to create a fact issue. Is it an effectively unavoidable condition or one presenting a severe risk of physical

harm? On the one hand, in the response to Application for Leave, Plaintiff contends that the "special aspect" is a failure to remove "black ice" that had remained for a week. In Plaintiff's opposition to the Motion for Summary Disposition, it was "effectively unavoidable" condition. The "black ice" condition is nowhere borne out by testimony or documentation. As to the "effective unavoidable" route, Plaintiff has presented no evidence that he was unable to employ any other route available in the complex or, for that matter, walking directly to the sidewalk rather than crossing the parking area. The trial court found that there were alternative routes or parking areas. Defendant offered testimony that Plaintiff was not entrapped. Rather, it was Plaintiff's choice (as he had done in the past), to visit the residential unit and make contact with Mr. LaVictor rather than just waiting in his car. Bruce Suardini's Affidavit [Exhibit D] confirms that the residential unit was not open and available to the public and that Mr. Wiater was not required to go to the residential office to "pick up" Mr. LaVictor. Despite the burden of proof, Plaintiff did not, show that Mr. Wiater had no alternative but to use that particular parking lot and route.

In the final analysis, all of this comes back to one question. If the injury causing condition is open and obvious, that is, ice, which is a ubiquitous condition in the Upper Peninsula during the long winter months, how can it be a "special aspect"? This lot was not distinct from all other parking. It possessed the same or similar condition. Even the Plaintiff argues that in his Brief in Response to Application for Leave, that there was nothing to distinguish this parking lot as unreasonably dangerous in contrast to others.

The common condition of the Defendant's parking lot, as well as the larger hazard involving black ice is open and obvious. Recent cases find no basis for liability. Snow and ice covered walkways, sidewalks and even steps and ice-covered stairs are open and obvious

dangers, relieving a land owner from liability. The rule developed by the decisions in *Riddle*, *Bertrand*, and *Lugo*, is now applicable to snow and ice conditions. See also *Corey* and *Joyce*. Although ice and snow is a danger, it does not constitute an unreasonable risk of injury to an "ordinarily prudent" person. See *Bertrand, supra*, at 615. Ice on a parking lot, salted or unsalted, is a common and expected condition habitually encountered by all people the same as pot holes. See *Lugo, supra*. This is an "everyday occurrence," obviously, during winter months and presents no unreasonable risk or danger. *Lugo, supra.*

The Michigan Supreme Court's recent decision and Order in *Kenny v Kaatz Funeral Home, Inc*, 472 Mich 929; 697 NW2d 526 (2005), is directly applicable here. This Court reversed the decision of the Court of Appeals and in lieu of granting an Application for Leave adopted the analysis stated in the dissenting opinion of Judge Griffin. *Kenny v Kaatz Funeral Home, Inc*, 264 Mich App 99; 689 NW2d 737 (2004). Special aspects are those that "give rise to a uniquely high likelihood of harm of severity of harm if the risk is not avoided..." Judge Griffin opined: "Neither a common condition nor an avoidable condition is uniquely dangerous," citing *Corey v Davenport College of Business, supra.* The open and obvious doctrine applies to snow and ice cases. *Perkoviq v Delcor Homes-Lakeshore Point, Ltd*, 466 Mich 11; 643 NW2d 212 (2002); *Joyce, supra.*

Judge Griffin opined that the older *Quinlivan v Great Atlantic & Pacific Tea Co, Inc*, 395 Mich 244; 235 NW2d 732 (1975), to the extent that it suggested that ice and snow conditions should be an "exception" to the open and obvious danger doctrine has been modified by more recent decisions. The average Michigan resident is charged with knowledge that during Michigan winters "ice" as well as snow, in parking areas is commonly encountered. Slippery

conditions creating a risk for slip and falls are "open and obvious." The "*average user*" knows or may discover a hazard on casual inspection. Based upon that objective standard:

> "...All reasonable Michigan residents could conclude that the snow-covered parking lot was slippery.

Furthermore, citing both *Lugo, supra*, and *Joyce, supra*, Judge Griffin noted:

> "Finally, plaintiff has presented no evidence of the alleged 'special aspect' of snow-covered and icy parking lot that created 'a uniquely high likelihood of harm or severity of harm."

Previously, this Court held that a layer of snow on a sidewalk did not constitute a unique danger creating a "risk of death or severe injury," *Joyce, supra*, at 243, and that a fall caused by ice-coated stairs likewise does not give rise to the type of severe harm contemplated in *Lugo, supra. Corey, supra*, at 6-7. The Court in *Lugo* found:

> "Simply put, there must be something out of the ordinary, in other words, special, about a particular open and obvious danger in order for a premises possessor to be expected to anticipate harm from that condition. Indeed, it seems obvious to us that if an open and obvious condition lacks some type of special aspect regarding the likelihood or severity of harm that it presents, it is not unreasonably dangerous. We cannot imagine an open and obvious condition that is unreasonably dangerous, but lacks special aspects making it so."

Plaintiff here offers no evidence that the Defendant either knew or should reasonably have anticipated an *unreasonably* dangerous condition, that is, one out of the ordinary that would constitute a special aspect compelling correction.

Snow and ice in a Michigan parking lot in winter is a common, not unique, occurrence. Under *Lugo* and *Kenny*, definition of "special aspects," ice and snow alone do not present "a *uniquely high* likelihood of harm or severity of harm" to be anticipated by Defendant. [Emphasis added]. See also *Joyce, supra*, at 241-243. In *Kenny*, Judge Griffin concluded:

> "Plaintiff also argues that the allegedly icy condition was unavoidable because only parking space in the lot was vacant when she and her companions arrived at the funeral home, and also because she was a passenger in the car and thus had no

> control over the parking of the car. However, these circumstances do not rise to the level of making her encounter with the allegedly icy condition 'effectively unavoidable' such that it would constitute an unreasonable risk of harm. See *Lugo, supra*, at 518-519. Moreover, as the trial court noted, '[A] reasonable person would have been alerted to the possibility that it was slippery outside when she witnessed her friends support themselves on the vehicle as they exited.' Thus, plaintiff's argument that the slippery parking lot presented 'special aspects' is without merit because the condition was both common and avoidable." *Corey, supra.*"

The same can be applied with equal force here. Any other finding would be a substantial deviation from the developing Michigan law and Supreme Court's holdings in the last few years. That is, there must be something odd, unusual, uncommon, extraordinary or unique about the condition of this parking lot distinguishing it from all other icy or slippery parking lots. The special aspect must be what creates the unreasonable risk of harm. Defendant's parking lot is not uncommon but extraordinarily common in terms of its condition with which, it must be assumed, Mr. Wiater had extensive experience with it. If ice on a parking lot in Michigan in wintertime, on its own constitutes a "special aspect," then all parking lots present a "special aspect" overcoming the open and obvious bar on liability. The *Kinney* holding finds to the contrary. Ice and snow are commonly encountered and expected during the cold months. If it were otherwise, Plaintiff needs to go no further in overcoming the Doctrine but to contend that he or she slipped on ice in a parking lot. The hows, whys and wherefores would be unnecessary. In a sense we're offered a proposition for strict liability rather than the burden of showing "special aspect" as an element of Defendant's duty. Surely, "special aspect" means something other than a slippery parking lot or sidewalk during a Michigan winter.

CONCLUSION

Faced with a Motion for Summary Disposition invoking the open and obvious condition, Plaintiff had the burden of presenting a prima facie case, including facts necessary to create a material and genuine issue that Defendant's parking lot presented a "special aspect" that caused Plaintiff's injury. This was part of Plaintiff's burden in establishing a duty. Plaintiff did not present proofs that there was no alternative route or that a condition creating a high risk of harm

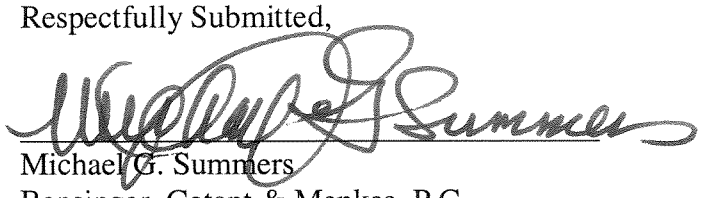
was effectively unavoidable. Nor did Plaintiff show that Defendant's parking lot, because it was icy, presented an unusually high risk of severe harm to Plaintiff. There must be something unusual, uncommon, normally unexpected or unique attaching to the condition that makes it unusually dangerous as a "special aspect." Both Plaintiff and his witness testified to the contrary. The common and expected condition here, being a slippery parking lot in wintertime, cannot be a special aspect. Otherwise, "open and obvious" becomes meaningless.

There is no effective way to differentiate between one icy parking lot and another for purpose of liability except by "special aspect." Ice and snow under present circumstances, based upon recent Michigan decisions, in parking lots and sidewalks do not, on their own, constitute an unreasonable risk of injury nor "special aspects" to avoid applicability of the doctrine. In sum, Plaintiff has failed to carry his burden if there was a duty and breach of duty to avoid Summary Disposition.

REQUEST FOR RELIEF

Defendant, Great Lakes Recovery Centers, Inc., request this Court reverse the decision of the Court of Appeals and peremptorily reinstate the trial court's grant of Summary Disposition or, in the alternative, grant Leave to Appeal.

Respectfully Submitted,



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